IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8299 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMDEEP VASUDEVPRASAD VERMA - Petitioner(s)

Versus

UNION OF INDIA & 2 - Respondent(s)

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Appearance :

MR PH PATHAK for Petitioner No(s).: 1.

MR SAMIR J DAVE for Respondent No(s).: 1,3.
MR SANDIP C SHAH for Respondent No(s).: 2.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 08/08/2005

ORAL JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by

the appropriate Government i.e Central Government dated 23rd June, 2003 in refusing to refer the dispute to the Labour Court / Industrial Court for its adjudication on the ground that the workman raised the dispute belatedly without any justification for the long delay.

2. It is the case of the petitioner that he was serving with the respondent – BSNL since 1.6.1984 and his service came to be terminated illegally in the year 1985. It is also case of the petitioner that thereafter the petitioner has preferred O.A.No.31 of 1995 before the Central Administrative Tribunal, Ahmedabad Bench challenging the alleged termination of his services and prayed for reinstatement in services under the provisions of Section-25-F of the Industrial Disputes Act, 1947. It is the case of the petitioner that the said O.A. No.31 / 1995 came to be disposed of by the Central Admn. Tribunal, Ahmedabad Bench by returning the papers of the O.A to the petitioner for presentation before the proper forum by observing that the relief prayed for is based on the provisions of the Industrial Disputes Act and in view of the decision of the Hon'ble Supreme Court in case of KRISHNA PRASAD GUPTA V. CONTROLLER, PRINTING AND STATIONARY reported in 1996 ATC 211, the CAT, Ahmedabad has no jurisdiction. It is the case of the petitioner that thereafter the petitioner had immediately

approached the Assistant Labour Commissioner by raising the industrial dispute on 3.10.2001 and as the dispute was not settled after many sittings and consequently, failure report was submitted by the Assistant Labour Commissioner (Central) and thereafter, by order dated 23rd June, 2003, the appropriate Government i.e Central Government has passed the impugned order refusing to refer the dispute to the Labour Court / Industrial Tribunal for its adjudication on the ground that the workman raised the dispute belatedly without any justification for long delay and the same is challenged by way of the present special civil application.

3. Shri P.H.Pathak, learned advocate appearing on behalf of the petitioner workman has vehemently submitted that once the Central Admn. Tribunal has entertained the aforesaid O.A. No.31 of 1995 and thereafter, returned the same to the applicant for presentation before the proper forum after period of five years, it cannot be said that the workman has raised the dispute belatedly and that too without any justification for a long delay. It is also further submitted that the CAT, Ahmedabad returned the papers of OA to the petitioner by order dated 3.11.2000 and the dispute was raised by the petitioner on 3.10.2001 and therefore, it cannot be said that there was any delay. It is also further submitted that if ultimately it is found by the competent court i.e. Labour

Court / Industrial Tribunal that the petitioner has raised the dispute belatedly, in that case, the petitioner may not be awarded the backwages and relief can be suitably molded by the Labour Court / Industrial Tribunal. He has also further relied upon the judgment of this Court of learned Single Judge dated 30th September, 2004 rendered in Special Civil Application No.7477 of 2004 in which considering the similar facts, the learned Single Judge has quashed and set aside the order passed by the appropriate Government (Central Government) and the matter came to be remanded to the Central Government for fresh decision, whether the dispute is to be referred for its adjudication to the appropriate Tribunal or not ?

4. Shri Sandeep Shah, learned advocate appearing on behalf of the respondent BSNL and Shri Sameer Dave, learned Addl. Standing Counsel for the Central Government are not in a position to get out of the judgment and order passed by the learned Single Judge of this Court dated 30th July, 2005 passed in Special Civil Application No.7477 of 2005.

5. Considering the fact that the petitioner has challenged the termination of 1985 by filing O.A.No.31 of 1995 before the Central

Admn. Tribunal, Ahmedabad Bench along with the application for condonation of delay and the said application was admitted and had remained pending before the CAT, Ahmedabad till 3.11.2000 and the CAT was pleased to relegate the petitioner to the remedy under the Industrial Disputes Act, therefore, the observations that the demand is raised belatedly that too without justification after much delay, is not born out from the record. The petitioner was under the bonafide belief and was agitating the remedy under the Administrative Tribunal Act before the Central Admn. Tribunal, Ahmedabad. Therefore, the Central government i.e appropriate Government was not justified in refusing to refer the dispute on that ground.

6. For the reasons stated above and considering the judgment of the learned Single Judge of this Court dated 30th July, 2004 in Special Civil Application No.7477 of 2004, I find that the respondent No.1 had committed an error in refusing to refer the dispute sought to be raised by the petitioner for adjudication to the appropriate Industrial Tribunal. Under the circumstances, the impugned order dated 23.6.2003 is hereby quashed and set aside and the matter is remanded to the respondent No.1 for fresh decision whether to refer the dispute for adjudication to the appropriate Tribunal or not keeping in mind the observations made

in this order. The aforesaid exercise be completed within a period of three months from the date of receipt of this order.

Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

[M.R.Shah, J.]

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